

UTILITIES CODE

TITLE 3. GAS REGULATION

SUBTITLE A. GAS UTILITY REGULATORY ACT

CHAPTER 104. RATES AND SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 104.001. AUTHORIZATION TO ESTABLISH AND REGULATE RATES. (a) The railroad commission is vested with all the authority and power of this state to ensure compliance with the obligations of gas utilities in this subtitle.

(b) The regulatory authority may establish and regulate rates of a gas utility and may adopt rules for determining:

- (1) the classification of customers and services; and
- (2) the applicability of rates.

(c) A rule or order of the regulatory authority may not conflict with a ruling of a federal regulatory body.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.002. COMPLIANCE WITH SUBTITLE. A gas utility may not:

- (1) charge, collect, or receive a rate for utility service except as provided by this subtitle; or
- (2) impose a rule or regulation except as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.003. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that each rate a gas utility or two or more gas utilities jointly make, demand, or receive is just and reasonable. A rate may not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of consumer. In establishing a gas utility's rates, the railroad commission may treat as a single class two or more municipalities that a gas utility serves if the commission considers that treatment to be appropriate.

(b) A rate for a pipeline-to-pipeline transaction or to a transportation, industrial, or similar large volume contract customer is considered to be just and reasonable and otherwise to comply with this section and shall be approved by the regulatory authority if:

(1) neither the gas utility nor the customer had an unfair advantage during the negotiations;

(2) the rate is substantially the same as the rate between the gas utility and at least two of those customers under the same or similar conditions of service; or

(3) competition does or did exist with another gas utility, another supplier of natural gas, or a supplier of an alternative form of energy.

(c) Subsection (b) does not apply:

(1) if a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under the pipeline-to-pipeline or transportation rate; or

(2) to a direct sale for resale to a gas distribution utility at a city gate.

(d) The reasonableness of gas purchase costs included in a city gate rate proposed to be charged for a sale for resale to a gas distribution utility at a city gate may be reviewed at a city gate rate proceeding even though the costs have been previously approved as a rate for other parties under Subsection (b).

(e) Subsection (b)(1) does not apply to a rate charged or offered to be charged to an affiliated pipeline utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.004. UNREASONABLE PREFERENCE OR PREJUDICE PROHIBITED. A gas utility may not:

(1) grant an unreasonable preference or advantage concerning rates or services to a person in a classification;

(2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates or services; or

(3) establish or maintain an unreasonable difference

concerning rates of services between localities or between classes of service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.005. EQUALITY OF RATES AND SERVICES. (a) A gas utility may not directly or indirectly charge, demand, collect, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable schedule of rates filed under Section [102.151](#).

(b) A person may not knowingly receive or accept a service from a gas utility for a compensation greater or less than the compensation prescribed by the schedules. A rate charged and collected by a gas utility on September 1, 1983, may be continued until schedules are filed.

(c) After notice and hearing, the railroad commission may, in the public interest, order a gas utility to refund with interest compensation received in violation of this section.

(d) This subtitle does not prevent a cooperative corporation from returning to its members net earnings resulting from its operations in proportion to the members' purchases from or through the corporation.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.006. RATES FOR AREA NOT IN MUNICIPALITY. Without the approval of the railroad commission, a gas utility's rates for an area not in a municipality may not exceed 115 percent of the average of all rates for similar services for all municipalities served by the same utility in the same county as that area.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.007. DISCRIMINATION AND RESTRICTION ON COMPETITION. A gas utility may not:

(1) discriminate against a person who sells or leases equipment or performs services in competition with the gas utility; or

(2) engage in a practice that tends to restrict or

impair that competition.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.008. BURDEN OF PROOF. In a proceeding involving a proposed rate change, the gas utility has the burden of proving that:

(1) the rate change is just and reasonable, if the utility proposes the change; or

(2) an existing rate is just and reasonable, if the proposal is to reduce the rate.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. COMPUTATION OF RATES

Sec. 104.051. ESTABLISHING OVERALL REVENUES. In establishing a gas utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.052. ESTABLISHING FAIR RATE OF RETURN. The regulatory authority may not establish a rate that yields more than a fair return on the adjusted value of the invested capital used and useful in providing service to the public.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.053. COMPONENTS OF ADJUSTED VALUE OF INVESTED CAPITAL. (a) Gas utility rates shall be based on the adjusted value of invested capital used and useful to the utility in providing service and that adjusted value shall be computed on the basis of a reasonable balance between:

(1) original cost, less depreciation; and

(2) current cost, less an adjustment for present age and condition.

(b) The regulatory authority may determine a reasonable balance that reflects:

(1) not less than 60 percent nor more than 75 percent of the original cost of the property at the time the property was dedicated to public use, whether by the gas utility that is the present owner or by a predecessor, less depreciation; and

(2) not less than 25 percent nor more than 40 percent of the current cost less an adjustment for present age and condition.

(c) In determining a reasonable balance, the regulatory authority may consider inflation, deflation, quality of service being provided, growth rate of the service area, and need for the gas utility to attract new capital.

(d) Construction work in progress, at cost as recorded on the gas utility's books, may be included as part of the adjusted value of invested capital used by and useful to the utility in providing service, as necessary to the financial integrity of the utility.

(e) Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(f) In this section, "original cost" means the actual money cost or the actual money value of consideration paid other than money.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.054. DEPRECIATION, AMORTIZATION, AND DEPLETION.

(a) The railroad commission shall establish proper and adequate rates and methods of depreciation, amortization, or depletion for each class of property of a gas utility or municipally owned utility.

(b) The rates and methods established under this section and the depreciation account required under Section [102.152](#) shall be used uniformly and consistently throughout rate-setting and appeal proceedings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.055. NET INCOME; ALLOWABLE EXPENSES. (a) Net income shall be used to establish just and reasonable rates. For that purpose, "net income" means the total revenues of the gas utility from gas utility service less all reasonable and necessary expenses related to that gas utility service. The regulatory authority shall determine those revenues and expenses in a manner consistent with this subchapter.

(b) In establishing a gas utility's rates, the regulatory authority may not allow a gas utility's payment to an affiliate for the cost of a service, property, right, or other item or for an interest expense to be included as capital cost or as expense related to gas utility service except to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the regulatory authority. That finding must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and

(2) a finding that the price to the gas utility is not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

(c) If an expense is allowed to be included in utility rates, or an investment is included in the utility rate base, the related income tax deduction or benefit shall be included in the computation of income tax expense to reduce the rates. If an expense is disallowed or not included in utility rates, or an investment is not included in the utility rate base, the related income tax deduction or benefit may not be included in the computation of income tax expense to reduce the rates. The income tax expense shall be computed using the statutory income tax rates.

(d) The regulatory authority may adopt reasonable rules complying with this section with respect to including and excluding certain expenses in computing the rates to be established.

(e) This section is not intended to increase gas utility rates to the customer not caused by utility service. Utility rates may include only expenses caused by utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.056. TREATMENT OF CERTAIN TAX BENEFITS. (a) In determining the allocation of tax savings derived from liberalized depreciation and amortization, the investment tax credit, and the application of similar methods, the regulatory authority shall:

(1) balance equitably the interests of present and future customers; and

(2) apportion accordingly the benefits between consumers and the gas utility or municipally owned utility.

(b) If a gas utility or municipally owned utility retains a portion of the investment tax credit, that portion shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied to the extent allowed by the Internal Revenue Code.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.057. CONSIDERATION OF CERTAIN EXPENSES. (a) In establishing a gas utility's rates, the regulatory authority may not allow as a cost or expense an expenditure:

(1) described by Section [102.154](#) that the regulatory authority determines to be not in the public interest; or

(2) for legislative advocacy.

(b) The regulatory authority may allow as a cost or expense reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.058. CONSIDERATION OF PROFIT OR LOSS FROM SALE OR LEASE OF MERCHANDISE. In establishing a gas utility's or municipally owned utility's rates, the regulatory authority may not consider a profit or loss that results from the sale or lease of merchandise, including appliances, fixtures, or equipment, to the extent that merchandise is not integral to providing utility service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.059. PENSION AND OTHER POSTEMPLOYMENT BENEFITS.

(a) In establishing a gas utility's rates, the regulatory authority shall allow recovery of the gas utility's costs of pensions and other postemployment benefits, as determined by actuarial or other similar studies in accordance with generally accepted accounting principles, in amounts the regulatory authority finds reasonable and necessary.

(b) If a gas utility establishes one or more reserve accounts for the purpose of tracking changes in the costs of pensions and other postemployment benefits, the gas utility shall periodically record in a reserve account any difference between:

(1) the annual amount of pension and other postemployment benefits approved and included in the gas utility's then current rates or, if that annual amount cannot be determined from the regulatory authority's order, the amount recorded for pension and other postemployment benefits under generally accepted accounting principles during the first year that rates from the gas utility's last general rate proceeding were in effect; and

(2) the annual amount of costs of pensions and other postemployment benefits as determined by actuarial or other similar studies that would otherwise be recorded by the gas utility were this provision not applicable.

(c) The gas utility must:

(1) establish separate reserve accounts for pensions and for other postemployment benefits; and

(2) apply the same methodology to allocate pension and other postemployment benefits between capital and expense as in the gas utility's last rate case.

(d) A surplus in a reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is greater than the amount determined under Subsection (b)(2). A shortage in a reserve account exists if the amount of pension and other postemployment benefits under Subsection (b)(1) is less than the amount determined under Subsection (b)(2).

(e) If the gas utility establishes reserve accounts for the costs of pensions and other postemployment benefits, the regulatory authority at a subsequent general rate proceeding shall:

(1) review the amounts recorded to each reserve

account to determine whether the amounts are reasonable and necessary;

(2) determine in accordance with Subsection (d) whether each reserve account has a surplus or shortage; and

(3) subtract any surplus from or add any shortage to the gas utility's rate base, with the surplus or shortage amortized over a reasonable time.

Added by Acts 2011, 82nd Leg., R.S., Ch. 172 (S.B. 403), Sec. 1, eff. May 28, 2011.

Sec. 104.060. CONSIDERATION OF COMPENSATION AND BENEFIT EXPENSES. (a) In this section, "employee compensation and benefits" includes base salaries, wages, incentive compensation, and benefits. The term does not include:

(1) pension or other postemployment benefits; and

(2) incentive compensation related to attaining financial metrics for an executive officer whose compensation is required to be disclosed under 17 C.F.R. Section 229.402(a).

(b) When establishing a gas utility's rates, the regulatory authority shall presume that employee compensation and benefits expenses are reasonable and necessary if the expenses are consistent with market compensation studies issued not earlier than three years before the initiation of the proceeding to establish the rates.

Added by Acts 2019, 86th Leg., R.S., Ch. 1362 (H.B. 1767), Sec. 1, eff. June 15, 2019.

SUBCHAPTER C. RATE CHANGES PROPOSED BY UTILITY

Sec. 104.101. DEFINITION. In this subchapter, "major change" means an increase in rates that would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2-1/2 percent. The term does not include an increase in rates that the regulatory authority allows to go into effect or the gas utility makes under an order of the regulatory authority after hearings held with public notice.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.102. STATEMENT OF INTENT TO INCREASE RATES. (a) A gas utility may not increase its rates unless the utility files a statement of its intent with the regulatory authority that has original jurisdiction over those rates at least 35 days before the effective date of the proposed increase.

(b) The gas utility shall also mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality.

(c) The statement of intent must include:

(1) proposed revisions of tariffs and schedules; and

(2) a detailed statement of:

(A) each proposed increase;

(B) the effect the proposed increase is expected to have on the revenues of the utility;

(C) each class and number of utility consumers affected; and

(D) any other information required by the regulatory authority's rules and regulations.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.103. NOTICE OF INTENT TO INCREASE RATES. (a) The gas utility shall:

(1) publish, in conspicuous form, notice to the public of the proposed increase once each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed increase; and

(2) provide notice of the proposed increase to any other affected person as required by the regulatory authority's rules.

(b) Instead of publishing newspaper notice, a gas utility may provide notice by:

(1) mailing the notice by United States mail, postage prepaid, to the billing address of each directly affected customer;

(2) including the notice, in conspicuous form, in the bill of each directly affected customer; or

(3) sending the notice by e-mail to each directly

affected customer if that address is available to the utility.

(c) A gas utility may provide a customer with notice of the utility's intent to increase rates by e-mail as described by Subsection (b)(3) only if the customer has consented in writing to the use of the customer's e-mail address for that purpose.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 103 (S.B. 885), Sec. 1, eff. September 1, 2013.

Sec. 104.104. EARLY EFFECTIVE DATE OF RATE INCREASE. (a) For good cause shown, the regulatory authority may allow a rate increase, other than a major change, to take effect:

(1) before the end of the 35-day period prescribed by Section 104.102; and

(2) under conditions the regulatory authority prescribes, subject to suspension as provided by this subchapter.

(b) The gas utility shall immediately revise its schedules to include the increase.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.105. DETERMINATION OF PROPRIETY OF RATE CHANGE; HEARING. (a) If a schedule modifying or increasing rates is filed with a regulatory authority, the regulatory authority shall, on complaint by an affected person, or may, on its own motion, not later than the 30th day after the effective date of the increase, enter on a hearing to determine the propriety of the increase.

(b) The regulatory authority shall hold a hearing in every case in which the increase constitutes a major change. The regulatory authority may, however, use an informal proceeding if the regulatory authority does not receive a complaint before the expiration of 45 days after the date notice of the increase is filed.

(c) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The gas utility is not required to provide a formal answer or file any other formal pleading in

response to the notice, and the absence of an answer does not affect an order for a hearing.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.106. PREFERENCE TO HEARING. The regulatory authority shall:

(1) give preference to the hearing under this subchapter and to deciding questions arising under this subchapter over any other question pending before it; and

(2) decide the questions as quickly as possible.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.107. RATE SUSPENSION; DEADLINE. (a) Pending the hearing and a decision:

(1) the local regulatory authority, after delivering to the gas utility a written statement of the regulatory authority's reasons, may suspend the operation of the schedule for not longer than 90 days after the date the schedule would otherwise be effective; and

(2) the railroad commission may suspend the operation of the schedule for not longer than 150 days after the date the schedule would otherwise be effective.

(b) The 150-day period prescribed by Subsection (a)(2) shall be extended for two days for each day the actual hearing on the merits of the case exceeds 15 days.

(c) If the regulatory authority does not make a final determination concerning a schedule of rates before expiration of the applicable suspension period, the regulatory authority is considered to have approved the schedule. This approval is subject to the authority of the regulatory authority thereafter to continue a hearing in progress.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 67, eff. Sept. 1, 2001.

Sec. 104.108. TEMPORARY RATES. (a) The regulatory authority may establish temporary rates to be in effect during the applicable suspension period under Section [104.107](#).

(b) If the regulatory authority does not establish temporary rates, the rates in effect when the suspended schedule was filed continue in effect during the suspension period.
Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.109. BONDED RATES. (a) A gas utility may put a changed rate into effect by filing a bond with the regulatory authority if the regulatory authority fails to make a final determination within 90 days from the date the proposed increase would otherwise be effective.

(b) The bonded rate may not exceed the proposed rate.

(c) The bond must be:

(1) payable to the regulatory authority in an amount, in a form, and with a surety approved by the regulatory authority; and

(2) conditioned on refund.

(d) The gas utility shall refund or credit against future bills:

(1) money collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on that money, at the current interest rate as determined by the regulatory authority.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.110. ESTABLISHMENT OF FINAL RATES. (a) If, after hearing, the regulatory authority finds the rates are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the rates the gas utility shall charge or apply for the service in question; and

(2) serve a copy of the order on the gas utility.

(b) The rates established in the order shall be observed thereafter until changed as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.111. APPROVAL OF DECREASE IN RATES. Notwithstanding any other provision in this subtitle, the regulatory authority may, without reference to the cost of service

standard prescribed by Section 104.051, administratively approve a decrease in rates proposed by the applicant and agreed on by each party directly affected unless the regulatory authority determines that the proposed decrease is not in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.112. SURCHARGE TO RECOVER RELOCATION COSTS. (a) This section applies to a gas utility's costs of relocating a facility to accommodate construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain that are not reimbursed by a source other than as provided by this section.

(b) A gas utility may recover its relocation costs to which this section applies through a surcharge on gas volumes sold and transported to customers in the service area where the relocation occurred by applying to each appropriate regulatory authority for a new rate schedule or tariff. The gas utility is not required to file a statement of intent to increase rates to institute the surcharge, and the other provisions of this subchapter, other than appeal rights, do not apply to institution of the surcharge.

(c) An application under Subsection (b) must include sufficient documentation to demonstrate:

- (1) the requirement for each relocation;
- (2) the entity requiring the relocation;
- (3) costs incurred for relocation of comparable facilities;
- (4) surcharge computations; and
- (5) that reasonable efforts have been made to receive reimbursement from the entity requiring the relocation, if applicable.

(d) Not later than the 35th day after the date an application under Subsection (b) is received, the regulatory authority shall administratively grant or deny the application. Denial of the application must be based on a finding that:

- (1) the relocation was not necessary or required;
- (2) the costs of the relocation were excessive or not

supported;

(3) the utility did not pursue reimbursement from the entity requiring the relocation, if applicable;

(4) the surcharge is unduly discriminatory among customers or classes of customers located in the service area; or

(5) the period over which the relocation costs are designed to be recovered is less than one or more than three years.

(e) If the regulating authority does not make a decision before the deadline prescribed by Subsection (d), the application is approved.

Added by Acts 1999, 76th Leg., ch. 219, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 662, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. RATE CHANGES PROPOSED BY COMMISSION

Sec. 104.151. UNREASONABLE OR VIOLATIVE EXISTING RATES.

(a) If the regulatory authority, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a gas utility for a service are unreasonable or in violation of law, the regulatory authority shall:

(1) enter an order establishing the just and reasonable rates to be observed thereafter, including maximum or minimum rates; and

(2) serve a copy of the order on the gas utility.

(b) The rates set under Subsection (a) constitute the legal rates of the gas utility until changed as provided by this subtitle. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.152. INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. If a gas utility does not produce the service that it distributes, transmits, or furnishes to the public for compensation but obtains the service from another source, the regulatory authority may investigate the cost of that production in an investigation of the reasonableness of the gas utility's rates. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. RATES FOR GOVERNMENTAL ENTITIES

Sec. 104.201. TRANSPORTATION RATES BETWEEN GAS UTILITY OR MUNICIPALLY OWNED UTILITY AND STATE AGENCY. (a) Notwithstanding Section 104.003(b), absent a contract for transportation service between a state agency and a gas utility or municipally owned utility, the railroad commission, not later than the 210th day after the date either party files a request to set a transportation rate, shall establish the transportation rate for the state agency. The commission has exclusive original jurisdiction to establish a transportation rate for a state agency under this section.

(b) The railroad commission shall base its determination of the transportation rate under Subsection (a) on the cost of providing the transportation service for both the distribution system and the transmission system, as applicable, of the gas utility or municipally owned utility.

(c) The railroad commission may order temporary rates under Subsection (a) as provided for under the commission's appellate jurisdiction.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.202. EXCLUDED EXPENSES. (a) The rates that a gas utility or municipally owned utility charges a state agency may not include an amount representing a gross receipts assessment, regulatory assessment, or similar expense of the utility.

(b) An expense under Subsection (a) that is reasonable and is not recovered from a state agency under this section may be recovered from other customers of the gas utility or municipally owned utility.

(c) A gross receipts assessment, regulatory assessment, or similar expense of the utility does not include a payment to a municipality under a contract, franchise, or other agreement.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1326, Sec. 1, eff. June 18, 1999.

Sec. 104.203. PAYMENT IN LIEU OF TAX. (a) A payment made in

lieu of a tax by a municipally owned utility to the municipality by which the utility is owned may not be considered an expense of operation in establishing the utility's rate for providing utility service to a school district or hospital district.

(b) A rate a municipally owned utility receives from a school district or hospital district may not be used to make or to cover the cost of making payments in lieu of taxes to the municipality that owns the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. SERVICES

Sec. 104.251. GENERAL STANDARD. A gas utility shall furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.252. AUTHORITY OF REGULATORY AUTHORITY CONCERNING STANDARDS. A regulatory authority, on its own motion or on complaint and after reasonable notice and hearing, may:

(1) adopt just and reasonable standards, classifications, regulations, or practices a gas utility must follow in furnishing a service;

(2) adopt adequate and reasonable standards for measuring a condition, including quantity, quality, and pressure relating to the furnishing of a service;

(3) adopt reasonable regulations for examining, testing, and measuring a service; and

(4) adopt or approve reasonable rules, regulations, specifications, and standards to ensure the accuracy of equipment, including meters and instruments, used to measure a service.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.253. RULE OR STANDARD. (a) A gas utility may file with the regulatory authority a standard, classification, regulation, or practice the utility follows.

(b) The standard, classification, regulation, or practice

continues in force until:

(1) amended by the utility; or

(2) changed by the regulatory authority as provided by this subtitle.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.254. SERVICE. A gas utility or municipally owned utility may not refuse to provide service to a state agency if pipeline capacity is available on an existing facility of the utility.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.2545. REQUIRED SERVICE TO PUBLIC RETAIL CUSTOMER.

(a) In this section, "service site" means facilities or buildings operated by a public retail customer or a group of adjacent facilities or buildings operated by a public retail customer within one contiguous geographical area.

(b) Unless the utility is prohibited by other law from providing the service and if sufficient pipeline capacity is available on an existing facility of the utility to provide the service, a gas utility or municipally owned utility may not refuse to provide service to a public retail customer at a service site, at rates established as provided by Subsection (c), the following services:

(1) the sale of gas;

(2) the transportation of an annual average of 25 million British thermal units or more each day of gas that is:

(A) taken as a royalty in kind; and

(B) owned by the state or managed by a marketing program operated by the state or by a state agency; or

(3) a combination of the services described by Subdivisions (1) and (2).

(c) A utility shall provide a service described by Subsection (b) at rates provided by a written contract negotiated between the utility and the state or a state agency. If the utility and the state or state agency are not able to agree to a contract rate, a fair and reasonable rate may be determined for the public

retail customer, as a rate for a separate class of service, by the railroad commission or, for municipally owned gas utilities, by the relevant regulatory body under this chapter.

(d) In this section, "public retail customer" has the meaning assigned by Section [101.009](#).

Added by Acts 1999, 76th Leg., ch. 300, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 563, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. [2263](#)), Sec. 6, eff. May 17, 2019.

Sec. 104.255. BILLING. (a) A gas utility or municipally owned utility may not bill or otherwise require the state or a state agency or institution to pay for service before the service is provided.

(b) The railroad commission shall adopt rules concerning payment of bills by the state or a state agency to a gas utility or municipally owned utility. The rules must be consistent with Chapter [2251](#), Government Code.

(c) This subtitle does not prohibit a gas utility or municipally owned utility from entering into an agreement with the state or a state agency to establish a level or average monthly service billing plan. An agreement under this subsection must require reconciliation of the leveled or equalized bills quarterly. Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.2551. ELECTRONIC BILLING. A gas utility or municipally owned utility may transmit the utility's bill for services through the Internet or by other electronic means instead of through the United States mail on the request of a customer of the gas utility or municipally owned utility.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 68, eff. Sept. 1, 2001.

Sec. 104.256. EXAMINATION AND TEST OF INSTRUMENT OR EQUIPMENT; INSPECTION. (a) A regulatory authority may:

(1) examine and test equipment, including meters and instruments, used to measure service of a gas utility; and

(2) set up and use on the premises occupied by a gas utility an apparatus or appliance necessary for the examination or test.

(b) The gas utility is entitled to be represented at an examination, test, or inspection made under this section.

(c) The gas utility and its officers and employees shall facilitate the examination, test, or inspection by giving reasonable aid to the regulatory authority and to any person designated by the regulatory authority for the performance of those duties.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.257. INSPECTION FOR CONSUMER. (a) A consumer may have a meter or other measuring device tested by a gas utility:

(1) once without charge, after a reasonable period of presumed accuracy that the regulatory authority establishes by rule; and

(2) at a shorter interval on payment of a reasonable fee established by the regulatory authority.

(b) The regulatory authority shall establish reasonable fees to be paid for other examining or testing of a measuring device on the request of a consumer.

(c) If the consumer requests the test under Subsection (a)(2) and the measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer, the fee the consumer paid at the time of the request shall be refunded.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 104.258. DISCONNECTION OF GAS SERVICE. (a) In this section:

(1) "Extreme weather emergency" means a period during which the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports.

(2) "Provider" means:

(A) a gas utility, as defined by Sections 101.003 and 121.001; and

(B) an owner, operator, or manager of a mobile home park or apartment who purchases natural gas through a master meter for delivery to a dwelling unit in a mobile home park or apartment house under Chapter 124.

(b) A provider may not disconnect natural gas service to a residential customer on a weekend day unless personnel of the provider are available on that day to take payments and reconnect service.

(c) A provider may not disconnect natural gas service to a residential customer during an extreme weather emergency. The provider shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall work with customers to establish a pay schedule for deferred bills.

Added by Acts 2001, 77th Leg., ch. 1149, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. INTERIM COST RECOVERY AND RATE ADJUSTMENT

Sec. 104.301. INTERIM ADJUSTMENT FOR CHANGES IN INVESTMENT.

(a) A gas utility that has filed a rate case under Subchapter C within the preceding two years may file with the regulatory authority a tariff or rate schedule that provides for an interim adjustment in the utility's monthly customer charge or initial block rate to recover the cost of changes in the investment in service for gas utility services. The adjustment shall be allocated among the gas utility's classes of customers in the same manner as the cost of service was allocated among classes of customers in the utility's latest effective rates for the area in which the tariff or rate schedule is implemented. The gas utility shall file the tariff or rate schedule, or the annual adjustment under Subsection (c), with the regulatory authority at least 60 days before the proposed implementation date of the tariff, rate schedule, or annual adjustment. The gas utility shall provide notice of the tariff, rate schedule, or annual adjustment to

affected customers by bill insert or direct mail not later than the 45th day after the date the utility files the tariff, rate schedule, or annual adjustment with the regulatory authority. During the 60-day period, the regulatory authority may act to suspend the implementation of the tariff, rate schedule, or annual adjustment for up to 45 days. After the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, any change in investment that has been included in an interim adjustment in accordance with the tariff or rate schedule under this section shall no longer be subject to subsequent review for reasonableness or prudence. Until the issuance of a final order or decision by a regulatory authority in a rate case that is filed after the implementation of a tariff or rate schedule under this section, all amounts collected under the tariff or rate schedule before the filing of the rate case are subject to refund.

(b) The amount the gas utility shall adjust the utility's rates upward or downward under the tariff or rate schedule each calendar year is based on the difference between the value of the invested capital for the preceding calendar year and the value of the invested capital for the calendar year preceding that calendar year. The value of the invested capital is equal to the original cost of the investment at the time the investment was first dedicated to public use minus the accumulated depreciation related to that investment.

(c) The interim adjustment shall be recalculated on an annual basis in accordance with the requirements of Subsection (b). The gas utility may file a request with the regulatory authority to suspend the operation of the tariff or rate schedule for any year. The request must be in writing and state the reasons why the suspension is justified. The regulatory authority may grant the suspension on a showing by the utility of reasonable justification.

(d) A gas utility may only adjust the utility's rates under the tariff or rate schedule for the return on investment, depreciation expense, ad valorem taxes, revenue related taxes, and incremental federal income taxes related to the difference in the value of the invested capital as determined under Subsection (b).

The return on investment, depreciation, and incremental federal income tax factors used in the computation must be the same as the factors reflected in the final order issued by or settlement agreement approved by the regulatory authority establishing the gas utility's latest effective rates for the area in which the tariff or rate schedule is implemented.

(e) A gas utility that implements a tariff or rate schedule under this section shall file with the regulatory authority an annual report describing the investment projects completed and placed in service during the preceding calendar year and the investments retired or abandoned during the preceding calendar year. The annual report shall also state the cost, need, and customers benefited by the change in investment.

(f) In addition to the report required under Subsection (e), the gas utility shall file with the regulatory authority an annual earnings monitoring report demonstrating the utility's earnings during the preceding calendar year.

(g) If the gas utility is earning a return on invested capital, as demonstrated by the report filed under Subsection (f), of more than 75 basis points above the return established in the latest effective rates approved by a regulatory authority for the area in which the tariff or rate schedule is implemented under this section, the gas utility shall file a statement with that report stating the reasons why the rates are not unreasonable or in violation of law.

(h) If a gas utility that implements a tariff or rate schedule under this section does not file a rate case under Subchapter C before the fifth anniversary of the date on which the tariff or rate schedule takes effect, the gas utility shall file a rate case under that subchapter not later than the 180th day after that anniversary in relation to any rates subject to the tariff or rate schedule.

(i) This section does not limit the power of a regulatory authority under Section [104.151](#).

(j) A gas utility implementing a tariff or rate schedule under this section shall reimburse the railroad commission the utility's proportionate share of the railroad commission's costs

related to the administration of the interim rate adjustment mechanism provided by this section.

Added by Acts 2003, 78th Leg., ch. 938, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 948 (H.B. 872), Sec. 1, eff. September 1, 2005.

SUBCHAPTER H. PROTECTION AGAINST UTILITY SERVICE DISCONNECTION

Sec. 104.351. DEFINITIONS. In this subchapter:

(1) "Customer" means any person in whose name gas utility service is billed, including individuals, governmental units at all levels of government, corporate entities, and any other entity with legal capacity to be billed for gas service.

(2) "Gas utility" has the meaning assigned by Section 181.021 but does not include a municipally owned utility or gas utility owned by an electric cooperative.

(3) "Nonsubmetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive gas utility service that is master metered but not submetered.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. 1772), Sec. 3, eff. January 1, 2014.

Sec. 104.352. NOTICE OF DISCONNECTION TO MUNICIPALITIES FOR NONSUBMETERED MASTER METERED MULTIFAMILY PROPERTIES. (a) A gas utility shall send a written notice of service disconnection to a municipality before the gas utility disconnects service to a nonsubmetered master metered multifamily property for nonpayment if:

(1) the property is located in the municipality; and

(2) the municipality establishes an authorized representative to receive the notice as described by Section 104.353(c).

(b) The gas utility shall send the notice required by this section not later than the 10th day before the date gas utility

service is scheduled for disconnection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. [1772](#)), Sec. 3, eff. January 1, 2014.

Sec. 104.353. ADDITIONAL SAFEGUARDS. (a) The customer safeguards provided by this subchapter are in addition to safeguards provided by other law or agency rules.

(b) This subchapter does not prohibit a municipality or the regulatory authority from adopting customer safeguards that exceed the safeguards provided by this chapter.

(c) The regulatory authority by rule shall develop a mechanism by which a municipality may provide the regulatory authority with the contact information of the municipality's authorized representative to whom the notice required by Section [104.352](#) must be sent. The regulatory authority shall make the contact information available to the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 322 (H.B. [1772](#)), Sec. 3, eff. January 1, 2014.